

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ALEXANDRE PELLETIER, Individually
and On Behalf of All Others Similarly
Situating,

Plaintiff,

- v. -

ENDO INTERNATIONAL PLC, RAJIV
KANISHKA LIYANAARCHCHIE
DE SILVA, SUKETU P. UPADHYAY, AND
PAUL V. CAMPANELLI

Defendants.

Hon. Michael M. Baylson

No. 2:17-cv-05114-MB

CLASS ACTION

ORAL ARGUMENT REQUESTED

**MACOMB’S REPLY IN FURTHER SUPPORT OF 2015 MACOMB
COUNTY INTERMEDIATE RETIREES MEDICAL BENEFITS
TRUST’S JOINDER IN MOTION TO INTERVENE**

The Macomb County Employees’ Retirement System (“MCERS”) and the 2015 Macomb County Intermediate Retirees Medical Benefits Trust (the “MCMBT,” and with MCERS, “Macomb”), submit this reply in further support of MCMBT’s joinder (ECF 252) in MCERS’s pending motion to intervene (ECF 228, the “Motion”). Defendants’ opposition to MCMBT’s joinder (ECF 266) is without merit, and MCMBT, like MCERS, should be permitted to intervene.

First, Defendants are wrong to assert that MCMBT sought to join the Motion “without explanation” (*id.* at 1). The motion, filed on December 23, states that MCERS held title to Macomb’s Endo shares; on January 7, pursuant to the Court’s order (ECF 238), MCERS filed a supplemental pleading stating that “the Endo shares at issue were held in” the MCMBT. (ECF 244 at 2 of 14.) On January 14, MCMBT served Defendants with an amended supplemental pleading (filed the next day) clarifying that “MCERS purchased and held title to certain Endo shares at issue, while MCMBT purchased and held title to other Endo shares at issue”; as a belt-

and-suspenders matter, MCMBT also joined the pending motion to intervene. (ECF 252 at 1 of 3.) Defendants can hardly claim any prejudice from this prompt clarification and joinder. And Defendants do not contest that MCMBT is a “real party in interest” with respect to its Endo shares, Fed. R. Civ. P. 17(a)(1).

Second, Defendants’ argument that MCERS cannot intervene because it “purchased only a small number of Endo shares, and sold them within days” (ECF 266 at 2) fails. Both MCERS and MCMBT invested in Endo stock during the Class Period, and the two entities share staff and service providers (including the same investment manager, as previously disclosed). MCERS will strengthen the representation of the Class, as it has recovered over \$280 million for investors in securities class actions, and has been approved as a class representative in this District. *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, No. CV 13-6731, 2016 WL 4138613, at *1 (E.D. Pa. Aug. 4, 2016). The same arguments for intervention apply to both entities.

Finally, Defendants’ footnote arguing that the “case law also does not support” the Motion is wrong. MCERS and MCMBT do not seek intervention “effectively to act as lead plaintiff,” but to serve as additional Class representatives. That is appropriate because the “PSLRA construct of a ‘lead plaintiff’ is not coextensive with a ‘named plaintiff’ under the traditional law of class actions,” and courts “retain the power to appoint additional class representatives” in PSLRA actions. *In re Herley Indus. Sec. Litig.*, 2009 WL 3169888, at *9, *11 n.12 (E.D. Pa. Sept. 30, 2009) (retaining original lead plaintiff but appointing additional class representative); *see also Wallach v. Eaton Corp.*, 837 F.3d 356 (3d Cir. 2016) (reversing denial of class members’ motions to intervene); *Link v. Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 929 (3d Cir. 1986) (“proper remedy” to questions about class representative’s adequacy “was to amend the class certification order or to permit additional plaintiffs to intervene”); 3 Newberg on Class Actions § 9:36 (5th ed.)

(intervention permitted where it “would strengthen the adequacy of the representation”). The Court should exercise that authority by appointing MCERS and MCMBT as Class representatives to strengthen the adequacy of the Class’s representation, while retaining Park as Lead Plaintiff.

DATED: February 4, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

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